

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DENNIS G. GRUEN,
Plaintiff,

Case No. 1:20-cv-356
Black, J.
Litkovitz, M.J.

vs.

COMMISSIONER OF
SOCIAL SECURITY,
Defendant.

ORDER

On October 27, 2021, a hearing was held before the undersigned on counsel for plaintiff's Motion to Substitute Party (Doc. 26). James Williams, counsel for plaintiff Dennis Gruen, and Patricia Biederman, plaintiff's sister, and the administrator of Dennis Gruen's estate, appeared for the hearing. Neither counsel nor a representative from the Social Security Administration was present.

Federal Rule of Civil Procedure 25(a) permits substitution of a party for a deceased party if: (1) the claim of a deceased party survives that party's death; (2) the individual seeking to be substituted is a "proper party"; and (3) the motion for substitution is made within "90 days after service of a statement noting the death." Fed. R. Civ. P. 25(a). Moreover, "[a] motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district." Fed. R. Civ. P. 25(a)(3).

The requirements of Fed. R. Civ. P. 25(a) have been met in this matter. First, plaintiff Dennis Gruen's social security claim survives his death, "and payment of any amount due should be made to 'the legal representative of the estate of the deceased individual, if any,' since [plaintiff Dennis Gruen] died prior to any payment being completed." *Cunningham v. Astrue*,

360 F. App'x 606, 611 (6th Cir. 2010) (quoting 42 U.S.C. § 404(d)(7); 20 C.F.R. § 404.503(b)(7)).

Second, the Motion to Substitute Party (Doc. 26) was timely filed because it was filed within 90 days of service of a statement noting the death of plaintiff. (Docs. 23, 26). Specifically, counsel for plaintiff filed a Suggestion of Death Upon the Record (Doc. 23), accompanied by a death certificate (*Id.* at PAGEID 1478), indicating that Mr. Gruen passed away on May 18, 2021. Counsel for plaintiff's Motion to Substitute Party (Doc. 26) was filed on September 10, 2021, which is within 90 days of the statement noting the death of plaintiff. Accordingly, the Motion to Substitute was timely filed pursuant to Fed. R. Civ. P. 25(a).

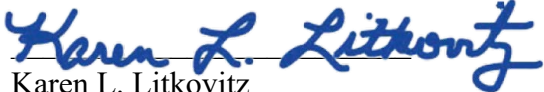
Third, Patricia Biederman is the "proper party" seeking to be substituted under Rule 25(a) because she is the legal representative of the estate of Dennis Gruen. "'Legal representative' is defined as 'the administrator or executor of the estate of the deceased individual.'" *Cunningham*, 360 F. App'x at 611 (citing 20 C.F.R. § 404.503(d)). As indicated by counsel for plaintiff at the hearing, and documented by the Entry Appointing Fiduciary attached to counsel for plaintiff's Motion to Substitute Party (Doc. 26 at PAGEID 1486), Patricia Biederman is the administrator of Dennis Gruen's estate. Therefore, Patricia Biederman is the "proper party" to be substituted for Dennis Gruen as the plaintiff in this matter. Fed. R. Civ. P. 25(a).

Finally, in accordance with the Court's September 17, 2021 Order (Doc. 27), service was perfected pursuant to Fed. R. Civ. P. 25(a)(3) because counsel for plaintiff indicated at the hearing, and the record demonstrates, that the Motion to Substitute Party, together with the notice of hearing, and the Suggestion of Death Upon the Record were served on Patricia Biederman as provided by Fed. R. Civ. P. 4. (*See* Doc. 28). Moreover, service was perfected on defendant "as provided in Rule 5." Fed. R. Civ. P. 25(a)(3); (Docs. 23, 26, 28).

Accordingly, pursuant to Fed. R. Civ. P. 25(a), counsel for plaintiff's Motion to Substitute Party (Doc. 26) is **GRANTED**. It is therefore **ORDERED** that Patricia Biederman shall be substituted for plaintiff Dennis Gruen in this matter. The Clerk is **DIRECTED** to substitute Patricia Biederman for Dennis Gruen as the plaintiff.

IT IS SO ORDERED.

Date: 10/27/2021


Karen L. Litkovitz
Chief United States Magistrate Judge